Virginia Department of Wildlife Resources
Migratory Bird Incidental Take Permit Stakeholder Meeting
November 19, 2020

Meeting Minutes

Elizabeth Andrews, Virginia Coastal Policy Center (VCPC) Director, opened the meeting at 8:32am. She discussed basic meeting instructions and summarized the agenda. There was a brief round of introductions:

- Ryan Brown – DWR. Executive Director
- Becky Gwynn – DWR, Asst. Chief, Wildlife Division
- Joshua Saks - Deputy Secretary of Natural Resources of Virginia
- Andrea Wortzel - Troutman & Pepper
- Deborah Murray – Southern Environmental Law Center
- Liz McKercher - Dominion Energy
- Joel Merriman - American Bird Conservancy
- Nikki Rovner – The Nature Conservancy
- Terri Cuthriell - VA Society of Ornithology
- Jonathan Magalski - American Electric Power (by phone)
- Joseph Lemen – Old Dominion Electric Cooperative
- Connie Ericson - Audubon Society of Northern Virginia
- Angel Deem – Virginia Department of Transportation
- Corey Connors - Virginia Forestry Association
- Tom Witt - Virginia Transportation Construction Alliance
- Jason Rylander - Defenders of Wildlife
- Ruth Boetcher – DWR, Coastal Wildlife Biologist
- Angela King - VCPC Asst. Director

Brown detailed the purpose and goals of the working group, and summarized actions at the federal level. Governor Northam tasked DWR late last winter / early spring to take on this issue.

He explained that we are in step one of a two-step regulatory process. The discussion draft publicized earlier this year was really the framework for how this program could work. All of this would be implemented through step down plans, which would establish requirements for specific projects. Today we are here to talk about the framework, and a later effort will focus on the step down plans. At the end of the day DWR wants to strike a balance that provides protection for the birds and certainty for the regulated

community, while at the same time taking into account the resources necessary for the agency to manage the program.

Saks noted that Virginia has much-loved bird populations and it is important to the Administration that they are protected. The goal here is not to create something that is too burdensome, but rather to return to what was previously in place.

Andrews thanked Brown and Saks for their comments and stressed to the group that its input matters. Andrews noted the date for the second meeting, Dec. 3rd, and provided instructions for attendees to provide additional comments to DWR between meetings.

Gwynn summarized the process to this point and provided an overview of the current draft regulation language as compared to the discussion draft publicized earlier this year. The discussion draft included three sets of language considered, but the general permit language was folded into this overarching “master” framework and the step down plan piece remains separate. One common concern expressed in comments on the discussion draft was to articulate the conservation and administrative intents of the program. Additionally, a desire to be clear about the nexus of this regulation to DWR’s statutory authority was expressed. She noted that only one new definition was added, to provide a definition for the Department; other definitions were updated; and we will discuss a couple of new definitions today as well. Comments also expressed confusion with treatment of endangered and threatened species, therefore those references have been removed other than to reference back to existing state code provisions. One component is a provisional regulatory reprieve and the opportunity for this regulation to be phased in. The elements for this have been expanded and the two-year window remains. Again, this master document is a framework while the specific expectations and obligations for a particular project would only apply after the development and approval of a step down plan. The regulation includes a description of permits, both an overview of general permits and individual incidental take permits.

Gwynn explained that perhaps the most significant feedback DWR received was with regard to the administrative framework and a desire for more certainty with the process. The updated permit procedure provisions seek to address these concerns. The permit issuance section has been expanded to include additional detail on things like suspension and revocation, as well as the fee structure. There is also an administrative appeals process. DWR reviewed all discussion draft comments and were very appreciative of the feedback. The agency has sought to address the comments received.

Deem said that one question VDOT continues to have is the definition of “regulated activity, ”specifically for activities that are “known to cause significant harm”. Additionally, they wonder whether or not maintenance activities fall into the definition of regulated activities.

Gwynn confirmed that maintenance activities would not fall into the definition. With respect to whether specific transportation projects are or are not covered, that is something that would be covered via the specific step down plan process. As we go through the discussion of commercial and industrial projects, if there is a similar framework we could incorporate with respect to transportation projects, then that might be one way to proceed.

Andrews asked the group for reactions to the general summary at this point, and referred to the agenda to note that specific topics of discussion will occur later during today’s meeting.

McKercher noted that the electric industry takes wildlife seriously. There is also a strong desire for reliability, and a strong nexus between reliability and wildlife. There are special groups that focus on avian concerns, there are avian protection plans, best practices documents, and a phone app that people in the field can use to identify and report bird situations. She would expect this is the norm with other companies in the industry. Dominion is onboard with the idea of avoiding and minimizing take, but there is still some hesitation about whether or not this is the best path to provide optimal conservation value while also minimizing taxpayer contributions (referring to agency staff and paperwork), and also fostering growth in the industry. At the federal level, there is a bill under consideration that calls for industry to register a project online, pay a fee and get a permit. There is an enforcement component to that. McKercher said she understands that a lot of work has gone into this process and will provide comments on the draft language, but also asked that the group consider whether or not this is the most efficient way to achieve conservation goals.

Brown recognized there are various viewpoints represented in the meeting and would welcome comments regarding alternative approaches, but would like to focus on the existing draft framework today unless there is a desire by the full group to shift the discussion at this time.

Ericson noted concerns about some of the broad exemptions in this proposal - for example, agricultural and silvicultural activities. She’s also concerned about excluded small energy projects and whether some coordination on those projects is needed. She

is still thinking through coordination with the endangered and threatened species provisions, and noted appreciation for all of the effort that has gone into this.

Murray echoed some of Ericson's concerns. Some language needs clarification and others are more limited than it needs to be: the "known to cause" language is a stiff requirement; both destruction and "significant impacts" to habitat should be considered; and why say it has to pose a "unique risk" to regulated birds? She also asked why the length of the permit terms was increased. She wants to ensure things are sufficiently weighted toward protection of the birds.

Lemen anticipates that there would be a lot of projects that would fall under this program. Could there be some type of programmatic approach, where an entity could submit a set of projects that are similar? This is not prompted by concerns about the fee amount, but rather more the burden of the paperwork.

Gwynn responded that this had not been considered, but is something that could be developed between now and the December meeting. Saks requested that Lemon provide additional ideas on this concept before the next meeting and Lemon said he will do that.

Rylander echoed what Murray said and referred to language at the federal level that he would prefer be used: "directly and foreseeably results", rather than "known to cause".

Deem said VDOT's assumption was that the bundling idea would be covered under the General Permit. If that is not the case, there will need to be some additional clarification in that language. Her other question is about avoidance and minimization of take. The word "disturb" has been added under the take definition - would VDOT continue to have the ability to proactively avoid impacts to species through deterring nesting? The way the language has been modified, it does not seem that would be possible, so she is wondering how to achieve avoidance or minimization. Maybe this will be covered via the discussion regarding on-site protection. She also asked about Lemen's idea to bundle projects by type; she thought that would be covered by the General Permit and step down plan?

Gwynn clarified that under the step down plans, certain classes of projects would have certain criteria established for them, but Lemen's question about a programmatic approach was a bit different. Brown noted that it made him think about the annual standards and specifications approach or linear projects (under erosion and sediment control;) rather than getting separate permit coverage for every single project, there is more of a program approval.

Merriman suggested that a definition for compensatory mitigation on the ground be added because that seems to be the intent here and it gets confused with minimization measures. Also, he asked for clarification - compensatory mitigation would be required for individual permits but not general permits, is that correct?

Murray said she believes it is not clear what “stepping down” means, and agreed with Merriman about the compensatory mitigation concept.

Gwynn indicated that the term step down was used to mean the movement from the overarching framework to more specific considerations. If this term causes confusion, the group could discuss changing the language to better clarify it. Saks said this term is often used by USFWS, and it basically means more detailed plans.

Brown responded to Merriman’s question regarding the application of compensatory mitigation to permits and confirmed that, as currently written, that is correct.

Magalski also supports the programmatic approach. It would help streamline the permitting process. It will help the electric utility industry implement their projects in a timely manner, but also efficiently by the agency.

Rovner noted in the chat that the definition of the avian conservation plan does mention that mitigation and minimization measures may be described for a specific category of activity in the step down plan.

McKercher agreed, via the chat, that a programmatic approach, similar to standards and specifications for erosion and sediment control, could achieve the conservation benefit most efficiently.

Wortzel does think there needs to be additional clarification concerning what happens for projects that take place while the framework is in place but the step down plans are still being developed. From the regulated community perspective there is a need for certainty, and there is not a lot of detail or understanding of how the habitat provisions work. The framework talks about unique habitats, but then defines habitat broadly. And something to keep in mind is how this program will work in conjunction with a federal program, if one is established during the next administration.

Brown said this is addressed in subsection C1 under prohibited acts - until a step down plan is adopted there are no criteria for the entity to conform to, and the permit is not required until the step down plan is adopted. Perhaps this could be made more

prominent. The concept is that if there is no step down plan adopted, there is no requirement for a permit. If and when a federal program is adopted and it is sufficiently addressing concerns, DWR would not adopt a step down plan or may consider repealing an existing step down plan if it is redundant, but would leave the framework in place as a stop gap measure. Gwynn said DWR will continue to refine and explain the habitat provisions between now and the next meeting.

Murray asked for clarification regarding the intent behind what is currently drafted regarding habitat. Gwynn said there are a lot of habitats that are important to migratory birds and this will be an area that needs to be addressed.

Deem referred to the provisional regulatory reprieve revisions and noted there are still significant gaps that remain because VDOT will need clarity well in advance of projects because of project timeframes. She will provide comments regarding suggested language.

Witt echoed Deem's concern regarding the current language for the provisional regulatory reprieve and the need for early notification. It is not clear how it works into existing processes. He expressed willingness to coordinate with VDOT on providing suggested language.

Break 9:54 - 10:00am
[Saks had to leave at 10am. Cuthriell also had to leave, but will rejoin when able.]

1. **Definition of Industrial Projects**

Gwynn shared new draft language on the screen. This falls under regulated activity for new construction or development. Comments indicated a need for clarification regarding what was meant by industrial projects. The language on the screen is based on staff thoughts, and feedback was welcomed.

McKercher requested more context - what is the goal behind differentiating industrial projects from commercial projects? Gwynn showed the language for commercial projects and said these were considered separately in case the general permit language is different for the two. If there is not a big difference, then perhaps the two could be merged.

Andrews pointed out that both definitions have a catch-all. Perhaps "non-commercial" should be added to the industrial language catch-all (#6) to match the language in the commercial catch-all.

Ericson asked how/when small scale vs. large scale would be determined - during the step down?

Gwynn said yes, that is one place where it could be defined. DWR has discussed how setting a specific acreage amount may not be the way to achieve the desired conservation goals.

Andrews asked for thoughts on whether these definitions should be separated or combined.

Magalski said he doesn't see the need to differentiate between the two in this manner - they both involve clearing of ground, and it's not really the type of activity or purpose of the development that is the focus; it's more about the size/siting of the project. Under industrial projects, #4 and 5 could be combined into one category, "electric generating facilities".

Andrews asked if this split reflects language from the federal level? Gwynn said it parallels in some regard. Currently, in Congress the MBPA is being debated and it does distinguish between commercial and industrial but doesn't provide much further clarity. But again, if there's not a compelling reason to keep them separate, DWR can consider combining them.

Merriman provided a conceptual thought: another thing to think about, in terms of framing, is really about the project's footprint and the existing condition of the land. There is an issue of scale, but there are also certain types of development where the impacts may continue after construction - so need to keep that in mind.

DWR said it would work on consolidating the definitions.

Murray said there may be good reason to keep them separate, one reason being matters of scale.

Deem suggested providing clarity about what will need a step down plan; what is the range of projects needing a permit? Need a threshold for "regulated activity." In the context of a regulated activity, there is a vast difference between the idea of an existing footprint and an expanding footprint (for example, intersection improvements vs. new projects). This discussion over definitions highlights the need for that distinction.

Ericson observed that multiple regulatory programs make this distinction; there is not necessarily a compelling reason for it, but it is common.

DWR will revisit these two definitions. Beyond the question of consolidation, incorporating scale, impact post-construction, etc. the group was asked for any other thoughts.

Deem asked if state facilities would be included. Gwynn anticipates DWR would have included them because there are few DWR regulatory programs where state facilities are exempted.

McKercher asked whether, from a regulatory standpoint, the list should say, “including but not limited to”. Not sure which one gives more regulatory certainty - for example, if you’re not on this list, does that create confusion?

Gwynn recognized that as a good point and noted the last item in each list is meant to be the “not limited to” aspect of it. The goal with this draft regulatory language was to try and provide a place to start this discussion and to address comments received on the discussion draft.

Ericson said that there are certain state facilities, like universities, which really should fit within the scope of commercial projects, so the “including, but not limited to” language may cover that.

Gwynn confirmed that she will share the language with the group after the meeting so they can further review and provide comments. Andrews noted that the meeting minutes will also be sent by email and posted on DWR’s migratory birds regulation website.

2. **Definition of Commercial Projects**

Discussion of this item was covered with item #1.

3. **Permitting Timeframes**

Andrews noted Murray’s earlier question regarding why the timeframes increased. The current language was reviewed.

Gwynn said that in all aspects of this there was a tremendous amount of feedback regarding timeframes, and there were also questions regarding the renewal process and timeline. DWR heard that a permit term of five years was a little short, but in other

areas heard that eight years was too long. DWR recognizes that not all projects are equal, and will have the ability to provide a shorter time frame for a permit via the step down plan. There is also the ability for the applicant to request a shorter duration to reflect the project's timeline. The changes were made to balance administrative tasks of the agency with conservation goals.

Ericson asked how "requested by the applicant" will be handled since this is under the general permit provision. Is additional language necessary to specify how it would work?

DWR recognized this as an issue. Gwynn reviewed the general permit language and noted that some of these details will be worked out in the categories of step down plan. For example, with communication towers, eight years would be too long. DWR can expand the language about how an applicant would request a shorter term. Andrews asked if something on the registration statement could ask the applicant whether or not they want to request a shorter term. Gwynn said yes, that could be considered.

Deem asked whether we are assuming the permit term is enforced for the period of the general permit, or terminated at the conclusion of construction?

Gwynn said the language can be updated to require that a permittee must notify DWR when a project is completed to trigger permit termination. Initial language was that the permit remained in place with monitoring.

Murray asked for clarification regarding how it would work beyond construction. Additionally, for the individual permit, why was the term changed to ten years?Gwynn said this was done because the individual permits are likely more comprehensive, so they provided an additional two years beyond the general permit term.

Rylander stated, via chat, that permits should cover not just construction but operation. For some projects, it is the operation not the construction that will be most impactful for migratory birds.

Brown stated that this is a construction-based program, and he recognizes that impacts to the birds can occur post-construction; but we need to consider what the agency can feasibly administer. He said if you look at the fees applicable to these permits, they are low and limited by statute, and we need to keep in mind that that is what the agency has to support its efforts. For every step down plan, DWR will need to consider how it is going to staff and manage these items.

Rovner said that TNC also encourages inclusion of operation in permit coverage, but also recognizes the concern that Brown identified. The Board of Wildlife Resources should consider moving resources around to better cover this program. Between now and the next meeting, perhaps DWR could consider how to cover operations for at least some kinds of projects. She will think about this more before the next meeting. Regarding permit terms, 10 years seems like a long time. And, when you say eight years or less, people will think of eight years. Maybe it would be better to provide a range (that will be further identified within step down plans).

Rylander said his review of the language didn't clearly identify that construction, not operation, is the purpose of the regulation. The resource constraints are definitely a consideration.

Merriman said obviously there is uncertainty since the step down plans haven't been developed yet, but he wonders if there is an opportunity to include operations at least for certain sectors. For a lot of sectors, once construction is done, that is the end of the story for impacts while for other sectors, it's just the beginning. Is there a way to recognize these differences, but also keep the resource issues in mind?

Andrews suggested leaving this in the "parking lot" of items for DWR to consider - how to balance construction/operation coverage and agency resources.

McKercher agreed that she will also need to think about this because one industry concern under the federal MBTA is the lack of ability to gain permit coverage and certainty. They are subject to criminal enforcement if they accidentally knock down an osprey nest and don't have the proper permit - so they need to think about to what extent operations could be covered.

Deem also was curious about the timeframe for the permit procedure section, and noted that additional clarity is needed regarding what an applicant does if DWR doesn't meet the stated timeframes for response. If there isn't an agency response, is the applicant free to move ahead with a project, or not? Gwynn said she thought this was addressed, but she will review the administrative timeline to be sure.

Merriman flagged the thirty day review to determine whether an application is complete, and if no action, it is deemed complete. These types of automatic "check boxes" are troubling, especially given concerns about agency resources.

Brown hopes to be able to estimate the number of new permittees and determine staffing needs as step down plans are created. If the agency misses a timeframe, the

options are to move forward or not. And, in this instance, the agency put the burden on itself. It's certainly an issue the agency has considered as well, and they are committed to making sure the timeframes will be met.

Merriman asked if the thirty day timeframe is reasonable given existing capacity, or should it be increased? Are there any similar automatic approvals elsewhere?

Gwynn said in the administrative procedures, an additional 90 calendar days is identified (with 120 days in certain situations). Does this address the question about similar automatic approvals? Merriman will review.

Rovner, via chat, suggested 45 days as a reasonable timeframe.

Deem noted, via chat, that many regulatory and permit reviews provide for thirty days.

Magalski asked about emergency provisions or after the fact permitting. What comes to mind as an example is restoring service after storm damage. Is there language in the current draft that would address this? Gwynn said that is an additional factor for DWR to consider.

Deem agreed with Magalski - if this concept covers construction only, then maybe it is not as big of an issue. If the project was already completed and you just need to make a repair, it's not an expansion and permit coverage could be considered not applicable.

Andrews asked for clarification on this. Deem responded that this fits with the earlier discussion regarding repair; if this is limited to construction activity, then by default emergency repair would not fall under "regulated activity" - provided it is not an expansion.

Magalski said he agreed with that.

McKercher, via chat, pointed to G.1.c. under Permitting Procedures and said it was not clear what happens if the permit applicant cannot revise the unsatisfactory permit application in 45 days. Perhaps the application is administratively withdrawn by DWR? It would be helpful to clarify what happens next. She was thinking about instances where Dominion is waiting for another agency (e.g., the Federal Energy Regulatory Commission) to confirm that a change to our migratory bird permit application meets a separate environmental or safety requirement.

Deem asked whether enforcement will be handled via step down plans or some companion regulation? Brown noted that the agency would rely on its existing enforcement authority; by Code, all of their regulatory violations are Class III misdemeanors and this would be handled the same way. But they will consider adding language re: inspections.

Wortzel, via chat, also said it is not clear what happens if a permit is not issued within 90 days.

DWR will consider this feedback before the next meeting.

4. **On-Site Protections vs. Mitigation**

Andrews referred back to earlier questions regarding nesting and harassment, and inclusion of the word “disturb”.

Brown noted that this area is one where DWR staff have the most remaining questions. What is the group's opinion on on-site requirements vs. allowing for mitigation - What thresholds? What does mitigation look like? This is the most open of the discussion topics identified for today.

Deem strongly recommended consideration of an in lieu fee program rather than offsite mitigation. She requested clarification regarding what is meant by onsite protections - is it employing best management practices, and if so, who is supplying those? This connects back to the harassment question.

Brown said they could clarify that the word “disturb” does not include any best management practices identified in a step down plan. DWR will work on this. Regarding use of an in lieu fee, he would appreciate more discussion from the group.

Rovner referred to TNC’s in lieu fee fund and mitigation activities. The reason that it works is because the agencies have to determine what is minimization, avoidance, etc. It seems like the regulators should say this is how far you have to go to minimize impacts and this is the level of compensation required for the impacts that remain. The collection of impacts into one project via an in lieu fee program can be more meaningful than individual projects. And harkening back to the earlier discussion about defining compensatory mitigation, she suggests using the word mitigation to refer to all three steps of the hierarchy (avoid, minimize, compensate) and then use compensate to refer to actions needed to offset impacts that you cannot avoid. She was speaking in favor of the option of an in lieu fee.

Ericson said that in lieu fees should be an option for the program.

Merriman agreed that in lieu fee programs have value and have their place, but he hesitates to see them be the only approach. He prefers a combination of options. Siting should be considered; maybe there are impact thresholds where in lieu is an option and others where it is not?

Wortzel said mitigation doesn't come into play unless you cannot meet the requirements of the step down plan - meaning, you need an individual permit and a plan gets developed during that process. Is that correct? Gwynn said no, it could be that mitigation could be required in a step down plan with respect to a general permit. Wortzel will review the language.

Murray came back to the harassment/disturbance discussion - VDOT's nesting example.

Gwynn provided an example with the HRBT expansion project and deterrent activities: to try to minimize the possibility that birds may nest on the island, and to reduce the potential for an incidental take to occur, certain activities were done. DWR will look at modifying the language to clarify that the word "disturb" does not include any best management practices identified in a step down plan.

Deem added that there is an important distinction between active and inactive nests. Also, regarding mitigation, an overarching goal of the framework seems to be geared toward habitat preservation - so it's a little difficult at this point to parse out impacts to the species vs. impacts to their habitat. Does DWR consider mitigation to be applicable when there is habitat impact, without regard to the presence of species? With the definition of unique habitat as it stands, it is very broad. How is DWR approaching mitigation - from a habitat perspective or specific species?

Gwynn said the focus is on construction and a lot of the discussion has been about land clearing and resulting impacts. There is an emphasis on both habitat and species; there could be indirect incidental take of the species itself that is not related to the habitat modification. At this point, they are leaving the door open to both of those. As the agency makes further edits it can provide additional clarification in that regard.

McKercher would appreciate as many tools in the toolbox as possible - especially with linear projects, you might be impacting a variety of habitats. It would also be helpful to hear DWR's preference structure - for example, do the Audubon "important bird areas"

trigger some sort of preference to keep the compensatory mitigation more local? In the Coastal Area Protection Zones, is it important to have compensation within the coastal zone? Need to identify overall conservation goals for birds and their priorities and how this fits with mitigation structure.

Merriman asked about whether the step down plan development will be a public process. Brown said yes, those will be public regulatory processes just like this process.

Rylander expressed general support for existing language regarding mitigation priorities (on page 6).

5. Administrative (in-house) Appeals Procedure

Andrews summarized the procedure and explained that this would be an agency guidance document incorporated by reference into the regulation.

Brown explained that this language came from a desire to provide an internal process for reviewing a decision. This process is used for other permits that DWR currently issues. It is not in place of litigation, but an internal dispute resolution tool that has been effective in other areas. It is intended to be a simple, low cost option.

Murray asked if this process allows other interested parties to intervene. Brown said that, as of now, it is between the permittee and the agency. Third parties can always communicate with the agency and let their opinions be known, but would suggest adding language to that effect if specific intervention is desired. Murray stated it would be beneficial as far as allowing for third parties to provide “official” input.

Deem asked whether this is strictly an appeals process or something more? It seems like it is broader. In terms of corrective action plans (CAP), it seems appropriate that those would be between the permittees and the agency. That is consistent with other programs. She also asked about the ability to transfer a permit, and Brown and Gwynn said transfer is addressed in the regulation.

Murray explained her feedback is more focused on providing third parties with an opportunity to express comments regarding proposed action plans, not to be part of the negotiation of the CAP. Brown said it does not sound unreasonable to him.

McKercher said for her it is a question of magnitude (how much opportunity to comment should there be?) and efficiency - she can see a lot of company and DWR resources

being used to answer interveners' questions. Maybe DWR should establish when intervention might be appropriate?

Deem suggested when DWR needs input from experts to talk through compensation and corrective action, that seems within the agency's purview. But in some cases, the permittee may be under a time crunch and this could add another layer of review.

Wortzel echoed what Deem said regarding clarification re: scope of the appeals procedure - is it just for permitting, or also enforcement? And with respect to timing, she suggests 30 rather than 14 days to file an appeal. Also, the formal hearing language doesn't specify ability to submit documentary evidence, as the informal fact finding language does. DEQ has a formal hearing manual that could serve as a template. For example, who appoints the hearing officer - the DWR director, or the Supreme Court? DWR also could cross reference the VA Administrative Process Act requirements.

Brown said the intent is basically an APA hearing, and the reason there is more detail with the informal fact finding proceeding is that is the preferred method DWR uses. DWR will take this feedback into account and clarify the language.

Andrews asked DWR if there are additional elements or clarification needed for next steps.

Brown said the discussion has been great and DWR can undertake additional edits and drafting prior to the next meeting based on today's feedback. Gwynn did not have anything additional.

Merriman returned to the discussion about the use of the term "step down" and wanted to revisit the use of this language. Rovner agreed, via chat. McKercher also agreed and suggested it could be called general permit sector specific guidance, etc. She also raised another wordsmithing item within the "disqualifying factors" language: there seemed to be some gaps because the assumption was that you had a permit, but think these factors should apply whether or not a permit is issued. She will share thoughts with Gwynn offline.

Deem asked if there is sufficient time for DWR to make the changes based on today's discussion prior to the December meeting. Brown suggested sticking with the current timeline and we can revisit if needed.

Next steps from here would be to take the regulation to the Board of Wildlife Resources. There is a January meeting and March meeting. There is also a December meeting

unrelated to this. Exact timing on taking the proposed regulation to the Board depends on when it is ready. There will be a public comment period, but until we know which meeting it will go to there are no specific time frames. The adoption of the step down plans will really depend on prioritization of the DWR staff and what needs to be handled first. Other than stating the agency will turn to those once this is done, there is no specific time frame.

Meeting adjourned at 11:55am.